

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

HIGH ROCK WESTMINSTER STREET LLC,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

CIVIL ACTION NO. 2013-500-S

**PLAINTIFF'S MOTION TO AMEND PRE-TRIAL ORDER  
(ASSENTED TO BY DEFENDANT, BANK OF AMERICA, N.A.)**

Plaintiff High Rock Westminster LLC ("High Rock") respectfully requests that the deadline for High Rock to make its expert witness disclosures pursuant to F.R.C.P. 26(a)(2) be extended until a date either: 1.) fifteen (15) days after defendant, Bank of America, N.A. ("BOA") produces the following documents, assuming the Court orders BOA to produce any or all of the requested documents; or 2.) five (5) days after the date of the Court's order if the Court denies High Rock's motion:

1. All Asset Condition Index ("ACI") data for 111 Westminster Street from 2010 through the present date.
2. All versions of the ACI technical and user manuals or similar documents that describe the available output in the ACI system, including the weighting system used in scoring individual building MEP assets.

3. BOA's "design guidelines" for arc flash studies, short circuit coordination studies, and short circuit analyses, as testified to by BOA's 30(b)(6) engineering designee on March 17, 2015<sup>1</sup>; and
4. All electrical, HVAC and façade maintenance "articles" maintained by BOA between April 2003 and April 2013, as testified to by BOA's 30(b)(6) engineering designee on March 17, 2015.<sup>2</sup>
5. An index of all BOA "articles", together with their effective dates.

As grounds for its motion, High Rock states that Categories 1-2 are the subject of a Motion to Compel which the Court has re-scheduled argument for April 14, 2014, and High Rock maintains that the existence of documents in Categories 3-5 were disclosed to High Rock's counsel during the Rule 30(b)(6) deposition of BOA's engineering designee on March 17, 2015.<sup>3</sup> In the opinion of High Rock, all of the above documents are of central relevance to the matters at issue in this case, and High Rock believes that its experts should be permitted access to the above materials before they issue their reports. BOA disagrees with High Rock's position.

WHEREFORE, plaintiff, High Rock respectfully requests that the Pre-Trial Order be amended in the manner requested above; that BOA serve its expert disclosures thirty (30) days after service of High Rock's expert disclosures; that all expert discovery be concluded, and all dispositive motions filed, thirty (30) days after BOA serves its expert disclosures; and all Pre-Trial Memoranda be filed thirty (30) days after decision on any dispositive motions, or if no

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<sup>1</sup> The "design guidelines" were described by Randall Evans, BOA's 30(b)(6) engineering designee, during his deposition at p. 108, l. 6 – p. 111, l. 8. The Evans Transcript is attached as Exhibit A to the Supplemental Reply Memorandum In Support of Motion to Compel (ACI Reports). It is not included here to avoid duplication.

<sup>2</sup> The "articles" were described by Mr. Evans during his deposition at p. 56, l. 17 – p. 58, l. 11, and p. 137, l. 5 – 10.

<sup>3</sup> High Rock's Rule 30(b)(6) Notice was served October 20, 2014. BOA produced Mr. Evans on March 17, 2015.

motions are filed, thirty (30) days after BOA serves its expert disclosures. High Rock has made no prior requests to modify or extend the Pre-Trial Order deadlines.

THIS MOTION IS ASSENTED TO BY THE DEFENDANT, BANK OF AMERICA, N.A.

Respectfully submitted,

HIGH ROCK WESTMINSTER  
STREET LLC

By its attorneys,

/s/ Mary C. Dunn

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Dated: March 24, 2015

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2015, I caused a true copy of the foregoing to be filed using the CM/ECF System. The following counsel of record has received notice electronically:

Robert Clark Corrente, Esq.  
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/s/ Mary C. Dunn